

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.  
W. A. DREW EDMONDSON, in his capacity as  
ATTORNEY GENERAL OF THE STATE OF  
OKLAHOMA and OKLAHOMA SECRETARY  
OF THE ENVIRONMENT C. MILES TOLBERT,  
in his capacity as the TRUSTEE FOR NATURAL  
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiff,

vs.

05-CV-0329 GKF-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,  
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,  
AVIAGEN, INC., CAL-MAINE FOODS, INC.,  
CAL-MAINE FARMS, INC., CARGILL, INC.,  
CARGILL TURKEY PRODUCTION, LLC,  
GEORGE'S, INC., GEORGE'S FARMS, INC.,  
PETERSON FARMS, INC., SIMMONS FOODS, INC.,  
and WILLOW BROOK FOODS, INC.,

Defendants.

**RESPONSES OF DEFENDANT, PETERSON FARMS, INC.  
TO STATE OF OKLAHOMA'S MARCH 17, 2009  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Defendant, Peterson Farms, Inc. ("Peterson Farms"), submits the following Responses to State of Oklahoma's March 17, 2009 Interrogatories and Request for Production of Documents to Peterson Farms, pursuant to Federal Rules of Civil Procedure 26, 33 and 34.

**GENERAL OBJECTIONS:**

1. Peterson Farms objects to, and does not agree to subject itself to, the arbitrary and extraordinary "definitions and instructions" described by the Plaintiffs to certain terms as set forth in their March 17, 2009 Interrogatories and Request for Production of Documents propounded to Peterson Farms, Inc. To the extent that such terms appear in the Interrogatories

and Requests for Production of Documents and are in excess of the requirements of the Federal Rules of Civil Procedure and Orders of the Court, Peterson Farms instead ascribes the ordinary, every day and reasonably, commonly understood meanings which apply to such terms, and also which comply with the Federal Rules of Civil Procedure. Peterson Farms objects to the definitions to the extent they assume facts not in evidence or related to facts or contentions in dispute in the action. Peterson Farms also specifically objects to the following definitions:

- a. The definition of "Poultry Waste" is overly broad, inconsistent with the terminology set forth in the statutes and regulations governing poultry growing operations in the Illinois River Watershed ("IRW"), and includes substances not typically associated with poultry litter.
- b. The definition of "Your poultry growing operations" is argumentative, and by virtue of ignoring the legal and factual distinction between Peterson Farms owned and operated facilities (of which there are none in the IRW), and those operations owned and operated by independent contractors, Plaintiffs seek for Peterson Farms to admit as a predicate to its responses factual and legal issues in dispute in the lawsuit.
- c. The definition of "Run-off" is misleading, overly broad, vague and ambiguous. Peterson Farms objects to the definition as it includes within its scope both the acts of nature and volitional or negligent acts of persons, which cannot be characterized by a single term. The term is also ambiguous in that it is unclear whether Plaintiffs are suggesting that a "release" involves the substance they define as "poultry waste," or whether it also includes chemical or other constituents which comprise some fraction of "poultry waste." Peterson Farms also objects to the definition in that it employs the term "release," which has a specific statutory and regulatory meaning, and as such, the

definition seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

d. The definition of "Waters of the State" is misleading, overly broad, vague and ambiguous. Peterson Farms objects to this definition as it seeks to categorize privately-owned and localized waters as "waters of the State," which is unsupported by law. Peterson Farms also objects to the definition as it seeks for Peterson Farms, as a predicate to its responses, to admit factual and legal matters, which are in dispute in the lawsuit.

e. Peterson Farms sets forth the preceding objections to the terms defined by Plaintiffs in their Requests to Admit and for Production, but acknowledges that the Court overruled similar objections set forth by Peterson Farms to Plaintiffs' April 20, 2007 Requests, and that the Court's ruling is embodied in its Order dated October 24, 2007 [Dkt. No. 1336]. Accordingly, Peterson Farms states the foregoing objections to said terms in order to preserve its position with regard to Plaintiffs definitions; however, Peterson Farms' Responses are not submitted subject thereto.

2. Each of the following responses are made subject to and without waiving any objections Peterson Farms may have with respect to the subsequent use of these responses or the documents identified pursuant thereto, and Peterson Farms specifically reserves: (a) all questions as to the privilege, relevancy, materiality, and admissibility of said responses or documents; (b) the right to object to the uses of said responses or the documents identified pursuant thereto in any lawsuit or proceeding on any or all of the foregoing grounds or on any other proper ground; (c) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to said responses or documents; and (d) the right, at any time, upon proper showing, to revise, correct or clarify any of the following responses.

3. Peterson Farms objects to each and every request to the extent it seeks or calls for information or the identification of documents which are protected from discovery and privileged by reason of: (a) the attorney-client communication privilege; (b) the "work product" doctrine; (c) the "trial preparation" doctrine; (d) the joint defense or "co-party" privilege; or (e) any other applicable discovery rule or privilege. To the extent Peterson Farms withholds or claims any protection from discovery from any document, Peterson Farms will produce logs of such documents as the document production progresses.

4. Peterson Farms objects to each and every request to the extent it seeks information or the identification of documents concerning any claims or occurrences other than the claims and occurrences set forth in Plaintiffs' First Amended Complaint for which Plaintiffs request relief.

5. Peterson Farms objects to the Interrogatories as each and every one of them exceeds the number of interrogatories allowed under Federal Rule of Civil Procedure 33(a): On April 21, 2006, Plaintiffs served one (1) interrogatory on Peterson Farms. On March 2, 2007, Plaintiffs served then (10) interrogatories on Peterson Farms. On September 13, 2007, Plaintiffs served fourteen (14) interrogatories on Peterson Farms. On December 31, 2007, Plaintiffs served four (4) interrogatories on Peterson Farms. On April 11, 2008, Plaintiffs served six (6) interrogatories on Peterson Farms. Thus, prior to these Interrogatories and without leave of Court or otherwise stipulated, Plaintiffs have served thirty-five (35) interrogatories on Peterson Farms, which exceeds the number authorized by Rule 33(a). Moreover, Peterson Farms objects to the Interrogatories as duplicative of interrogatories served on Peterson Farms on March 2, 2007 (Interrogatory No. 2) and September 13, 2007 (Interrogatory Nos. 1 and 2); Peterson Farms

incorporates by reference as fully stated herein its answers and objections to the aforementioned interrogatories.

6. Peterson Farms objects to the Requests for Production as duplicative of document request served on Peterson Farms on or about July 10, 2006; March 2, 2007; and September 13, 2007. Peterson Farms has produced documents and things responsive to these prior requests for production and, where appropriate, has supplemented its production in accordance with the Federal Rules of Civil Procedure. Accordingly, Peterson Farms has no further obligation to produce documents it has already produced to Plaintiffs. Peterson Farms incorporates by reference as fully stated herein its answers and objections to the aforementioned interrogatories.

7. Peterson Farms also incorporates as though fully restated herein all objections and limitations to responses made by every other Defendant to the corresponding requests to admit and request for production.

8. Except as set forth above, the foregoing objections apply to each and every response herein. By specifically incorporating individual General Objections in any response, Peterson Farms expressly does not waive the application of the remainder of the General Objections to such response.

#### Interrogatories

**Interrogatory No. 1:** Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) in which poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW as fertilizer, identifying all witnesses to the application and all documents evidencing it.

**Answer:** Peterson Farms incorporates the General Objections, including but not limited to Number 5, into its answer to Interrogatory No. 1. Peterson further objects to the interrogatory as vague, overly burdensome, overly broad and not limited in any way with regard to time or scope of information sought. The interrogatory seeks information which Peterson Farms neither tracks nor maintains in the normal course of its business. Peterson Farms also objects to the interrogatory as misleading in that it suggests that the owner of the poultry houses where the "poultry waste" is initially situated, *i.e.*, the independent contract poultry grower, is the individual who makes the ultimate decision as to the location, amount and timing for every land application of such "poultry waste." Plaintiffs' interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from the poultry growers, and make their own decisions about utilization of the "poultry waste" according to their own purposes. Peterson Farms objects to the interrogatory to the extent that the information sought is obtainable from the reports, records and documentation required to be submitted to the State of Oklahoma and its administrative agencies under Oklahoma law by anyone within the IRW who land applies poultry litter as fertilizer and, thus, already within Plaintiffs' possession and control.<sup>1</sup> Plaintiffs Peterson Farms also objects to the extent the interrogatory would require Peterson Farms to research and compile information from documents, *i.e.*, animal waste management plans and nutrient management plans (hereinafter "Nutrient Management Plans") issued to its former contract growers by the States of Oklahoma and Arkansas, previously produced to Plaintiffs. Subject to and without waiving the foregoing objections and the General Objections, Peterson

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<sup>1</sup> Notably, in their filing at Dkt. #1963, Plaintiffs concede throughout their brief that the Oklahoma Department of Agriculture, Food & Forestry, which Plaintiffs' purport to represent in this lawsuit, maintains these Nutrient Management Plans in its files and these plans contain the information that Plaintiffs now seek from Peterson Farms in these interrogatories. *See, e.g.*, Dkt. #1963, at 8-9; Dkt. #1963-3, at 4-26 (attaching the Nutrient Management Plan for W.A. Saunders, who was formerly under contract with Peterson Farms to raise poultry).

Farms does not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

**Interrogatory No. 2:** Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) where poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW which has not resulted in any run-off or leaching, identifying all witnesses to the application and all documents evidencing it.

**Answer:** Peterson Farms incorporates its objections and answer to Interrogatory No. 1 as though fully re-stated herein. Peterson Farms incorporates the General Objections, including but not limited to Number 5, into its answer to Interrogatory No. 2. Peterson Farms further objects as argumentative, overly burdensome and broad, vague and not limited in any way with regard to time or scope of information sought. Plaintiffs do not identify with specificity the runoff or leaching of any particular substance, thereby requiring that Peterson Farms speculate as to the alleged runoff or leaching. Peterson Farms also objects to this interrogatory as it assumes facts not in evidence, and presumes that "run-off or leaching" of "poultry waste", or some other substance, has occurred in the IRW. Peterson Farms further objects to this interrogatory as it contains a contention that improperly purports to shift the burden of proof from Plaintiffs to Peterson Farms on the issue of whether any "run-off or leaching" of "poultry waste" has occurred. Peterson Farms also objects to the interrogatory as misleading in that it suggests that the owner of the poultry houses where the "poultry waste" is initially situated, *i.e.*, the independent contract poultry grower, is the individual who makes the ultimate decision as to the location, amount and timing for every land application of such "poultry waste." Plaintiffs'

interrogatory ignores that third persons within and without the IRW acquire title to "poultry waste" from the poultry growers, and make their own decisions about utilization of the "poultry waste" according to their own purposes. Subject to and without waiving the foregoing objections and the General Objections, Peterson Farms does not have knowledge of when poultry litter is applied within the IRW, where it is applied, how much is applied, or the STP for any location before its application.

Subject to and without waiving the foregoing objections and its General Objections, Peterson Farms is also not aware that any "poultry waste" land applied by any independent grower formerly under contract with it has resulted in any "run-off or leaching" in the IRW. Representatives of the State of Oklahoma, *see, e.g.*, depositions of Teena Gunter and Mike Thralls, have indicated that compliance with Nutrient Management Plans is compliance with Oklahoma law with regard to, among other things, run-off. Plaintiffs have not identified any poultry grower formerly under contract with Peterson Farms who has violated his or her Nutrient Management Plan; therefore, Peterson Farms is not aware of any evidence that any "run-off or leaching" has occurred in the IRW.

#### **Requests for Production**

**Request for Production No. 1:** Please produce all documents identified in the foregoing interrogatories.

**Response:** Peterson Farms incorporates the General Objections, including but not limited to Number 6, into its answer to Request for Production No. 1. Peterson Farms incorporates its objections and answer to Interrogatory Nos. 1 and 2 as though fully re-stated herein. Subject to the foregoing objections and the General Objections, to the extent Peterson Farms possesses such information in its business records, it will be contained with the Nutrient



Management Plans, which to the extent possessed by Peterson Farms, are included within its previously produced growers' files at PFIRWP-1 through 9965, 9992 through 245307, 24437 through 24457, 24943 through 27874, and 27883 through 62653.

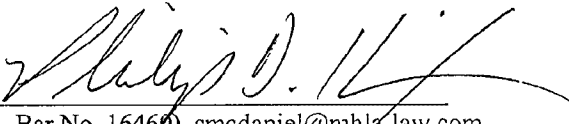
**Request for Production No. 2:** Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application was used as fertilizer, including but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

**Response:** Peterson Farms herein incorporates its response and objections to Request for Production No. 1 as if fully restated herein.

**Request for Production No. 3:** Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application of poultry waste has not resulted in any run-off or leaching, including but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

**Response:** Peterson Farms herein incorporates its response and objections to Request for Production No. 1 as if fully restated herein.

Respectfully submitted,

By /s/ Philip D. Hixon 

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**CERTIFICATE OF SERVICE**

I certify that on the 16<sup>th</sup> day of April, 2009, I electronically transmitted the attached document to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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/s/ Philip D. Hixon

